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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,528	10/07/2005	Urs Reuteler	045-102	5960
1009	7590	09/05/2007	EXAMINER	
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			HARMON, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			09/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/532,528	Applicant(s) REUTELER ET AL.	
	Examiner Christopher R. Harmon	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-15, 19 and 96-106 is/are pending in the application.
- 4a) Of the above claim(s) 10-15, 19 and 96-105 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-6, 9 and 106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/30/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 96-105 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the invention has the special technical feature of actuators for actuating lugs on conveyors. The originally presented invention does not require such technical features.

1. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 96-105 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Claims 10-15 and 19 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Note: applicant's stated special technical feature common to the inventions (ie. conveying a carton in an orthogonal direction with at least one folded flap) is not novel; see Williams et al. (US 4,581,876). Therefore, because the special technical feature common to the inventions is not a technical feature that defines a contribution over the prior art, it is clear that applicant is relying upon other limitations for patentability; see MPEP 1850. Because the inventions are directed towards divergent subject matter a substantial burden exists for the examiner to examine all separate distinct inventions.

Claim Rejections - 35 USC § 112

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "the first flap" line 3 lacks antecedent basis. Note that the at least one flap is folded by the folding means along the path by the takeaway conveyor not before or during engagement with the overhead conveyor in a first direction.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 5 and 106 are rejected under 35 U.S.C. 102(b) as being anticipated by Ganz (US 3,745,892).

Ganz discloses a machine for conveying a carton having a lid with flaps comprising overhead chain conveyor 21 with lugs 23; takeaway conveyor 10 with lugs 22 conveyed in an upstanding position generally perpendicular to overhead conveyor 21; means for folding the flaps 57 while carton is on takeaway conveyor; rotatable wheel 34 for first fold; see figure 8.

Regarding claim 2, lugs 23 are considered pivotally mounted with respect to the chain 21 as they move from a depending/engaging position to a retracted/return position

along the upward direction which overlies the conveying path of the cartons, see figure 8.

Claims 1-2, 5-6, 9 and 106 are rejected under 35 U.S.C. 102(b) as being anticipated by Charron (US 4,460,349).

Charron discloses machine for conveying a carton having a lid with flaps comprising overhead chain conveyor 34 with lugs 84 that convey cartons in a first (downward) direction; takeaway conveyor 56 with pop-up lugs 302 conveyed in an upstanding position generally perpendicular (horizontal) direction to overhead conveyor; means for folding the flaps 92 while carton is on takeaway conveyor; rotatable wheel 192 with projection 188 for first fold; glue applicators 36; see figures 5, 9-10.

Regarding claim 6, folding takes place on the takeaway conveyor via plow 242 and rotatable wheel 332; see figure 16.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ganz (US 3,745,892).

The takeover conveyor of Ganz is not directly disclosed as a pair of chains with lugs, however it is likely that the invention was meant to include such a configuration similar to the overhead conveyor in order to accept and transfer the items, note that the

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length of the 6-pack is 2x3 thereby showing the lesser side in the figures. A single lug on a chain conveyor could conceivably position the items as desired however it is not considered likely. Alternatively it would have been an obvious design choice to one of ordinary skill in the art to modify the conveyor system 10 of Ganz to include two chain conveyors with lugs (configured as the overhead conveyor) for conveying the items through the packaging stations.

9. Claims 1-6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randles (US 4,590,745) in view of Gobalet (US 2,970,526).

Randles discloses a machine for folding boxes comprising lug conveyors with parallel conveyor chains located adjacent and perpendicular to one another; folding means 19 for first flap; folding means 25 with means/stationary plows 68 and 70 for second and third flaps respectively; see figure 1. Lugs are considered retracted and upstanding to selectively engage boxes C. Rotatable wheels 54 have projections (axles and bolts mounted in slots 60) for at least partially closing flaps and completing the folding (by adhesion); see figure 2. Randles does not disclose an overhead conveyor however Gobalet discloses overhead lug conveyor 11 for transporting boxes in a similar invention; see above. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the overhead conveyor in the invention to Randles for forwarding the boxes along the path.

Response to Arguments

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10. Applicant's arguments filed 7/30/07 have been fully considered but they are not persuasive. Regarding the rejection including Randles and Gobalet, note that the takeaway conveyor further comprises elevator 62 which raises the carton in a tranverse direction to the first direction. Note that a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. While evaluating obviousness, one must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions; see *KSR Int. v. Teleflex 550 US__*(2007). The inclusion of the overhead conveyor of Gobalet in the invention to Randles is a mere substitution of known conveying devices in order to transfer the cartons to the desired location.

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art; *ibid*.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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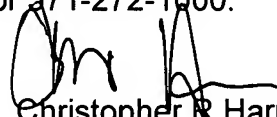
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher R. Harmon
Primary Examiner
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